Supreme Court of the United States

OCTOBER TERM, 1969

No. 728

ROBERT DEAN DICKEY,

Petitioner,

—v.—

FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 728

ROBERT DEAN DICKEY, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT

CHRONOLOGICAL LIST OF IMPORTANT DATES

1. Affidavit and Warrant issued—July 1, 1960
2. Detainer Warrant sent to Federal Authorities—September 2, 1960
3. Writ of Habeas Corpus Act—Prosequendum dated October 29, 1962, filed
4. Order denying Writ dated December 1, 1962, filed Clerk of the Circuit Court, December 3, 1962
5. Writ of Habeas Corpus Ad Prosequendum, dated April 1, 1963
6. Order Denying Writ, dated April 15, 1963, filed April 16, 1963, Clerk of the Circuit Court
7. Motion for Speedy Trial or Dismissal, dated March 28, 1966
8. Order Denying Motion, dated April 13, 1966, filed April 13, 1966, Clerk of the Circuit Court
9. Petition for Dismissal dated September 1, 1967, filed September 6, 1967, Clerk of the Circuit Court
10. Order for Writ of Habeas Corpus Ad Prosequendum, dated December 15, 1967, filed Clerk of the Circuit Court, December 15, 1967

11. Information charging Robbery dated December 15, 1967, filed Clerk of the Circuit Court, December 15, 1967
12. Motion to Quash, dated January 30, 1968, filed January 31, 1968, Clerk of the Circuit Court
13. First Motion for Continuance dated January 30, 1968, filed January 31, 1968, Clerk of the Circuit Court
14. Affidavit dated January 31, 1968, filed January 31, 1968 Clerk of the Circuit Court
15. Hearing held on January 31, 1968, all pending motions
16. Order Granting Motion for Continuance, entered January 31, 1968
17. Second Motion for Continuance, dated February 12, 1968, filed February 13, 1968, Clerk of the Circuit Court
18. Order Denying Motion to Quash and Second Motion for Continuance, February 13, 1968, filed February 13, 1968, Clerk of the Circuit Court

IN COURT OF JUSTICE OF PEACE
FIRST DISTRICT, GADSDEN COUNTY
STATE OF FLORIDA

STATE OF FLORIDA

vs.

ROBERT DEAN DICKEY

WARRANT, CRIMINAL CHARGE

In the Name of the State of Florida, to all and Singular the Sheriffs and Constables of the State of Florida.

Whereas, Robert Martin has this day made oath before me that on the 28th day of June, A. D. 1960 in the County and District aforesaid, one Robert Dean Dickey, did then and there by force, violence or assault or putting to fear, feloniously, rob, steal and take away from the person or custody of Mrs. Ralph Clark certain property then and there the subject of larceny, to-wit; United States Currency or money of the value of $40.00 of the property, goods and chattels of Clarks Motor Court; a better description being to your informer unknown contrary to the statute in such cases made and provided and against the peace and dignity of the State of Florida:

These are, Therefore, to Command you to arrest Robert Dean Dickey the said defendant and bring him before me to be dealt with according to law.

Given under my hand and seal this 1st day of July, A. D. 1960

State of Florida
Gadsden County

Signed A. B. BLACKBURN [SEAL]
Justice of the Peace,
First District.

I, A. B. Blackburn Justice of the Peace District Number one of Gadsden County Florida, certify that the foregoing is a true and correct copy of the warrant which I issued for the arrest of Robert Dean Dickey, July 1 1960 in the case of State of Florida vs Robert Dean Dickey for Armed Robbery Quincy Florida September 27th A.D. 1967

Signed A. B. Blackburn

IN JUSTICE COURT,
FIRST DISTRICT,

GADSDEN COUNTY,
STATE OF FLORIDA

STATE OF FLORIDA

vs.

ROBERT DEAN DICKEY

WARRANT

For Criminal Charge
Armed Robbery

Returnable the _____ day

of _____, A. D. 19___

Defendant pleads _____

A. B. BLACKBURN
Justice of the Peace,
First District.

Bail is hereby fixed in the amount of

_____

Received this Warrant _____
day of _____, A. D. 19__,
and executed it on the _____
day of _____
A. D. 19__, by arresting the within-named
_____
and having_____now before the Court
_____, 19__
_____

Sheriff, Deputy Sheriff, Constable

Fees:

Arrest - - - - - - -	$_____
Return - - - - - - -	_____
Committing to Jail - - -	_____
Mileage - - - - - - -	_____
Release - - - - - - -	_____
Approving Bond - - -	_____
	_____
Total - - - - - - -	$_____

_____

IN THE SUPERIOR COURT
FOR GADSDEN COUNTY
GADSDEN, FLORIDA

No.

ROBERT DEAN DICKEY, PETITIONER

—versus—

WILLIAM D. HOPKINS, State Attorney,
Gadsden County, Florida, RESPONDENTS

WRIT OF HABEAS CORPUS AD-PROSEQUENDUM

I Robert Dean Dickey hereafter known as the petitioner in the foregoing action, first being duly sworn by the Undersigned Parole Officer, according to law, depose and say; that he is a Citizen of the United States of America, by birth, who hereby petitions this Honorable Court for Writ of Habeas Corpus. *Requesting The Above Named Respondent to Show Cause Why He Is Violating your Petitioners Constitutional Rights As Guaranteed By The Sixth And Fourteenth Amendments of The United States Constitution.*

Petitioner states that he is presently confined in the United States Penitentiary at Alcatraz, California by virtue of a sentence imposed upon him by a United States District Court.

Petitioner further states that the aboved named Respondent is holding a warrant for the Arrest of your petitioner Charging, "Armed robbery" said Warrant has been in effect since on or about the 1st day of July, 1960, thus depriving petitioner of his rights as guaranteed by the Sixth Amendment of the United States Constitution, Since said warrant has not been executed in a fair and speedy trial.

If the Court please note: The Sixth Amendment of The United States Constitution Provides That: In All Criminal Prosecutions The Accused Shall Enjoy The Right to A Speedy and public Trial. The Usual method for The Enjoyment of this Protection Is to Ask for A Trial. Continuing, It Is Stated, "One Already Serving a term may be tried on Charges Pending Against Him because of This Valunable Guarantee.". see: McCarty vs. U.S. (8th Cir.) 19 F. (2nd) 462; Whitaker vs. Humming, (9th Cir.) 19 F. (2nd) 760; Beaver vs. Hanbert, 198 U.S. 77, 25, 5, Ct. 573, 49, Led. 950.

Therefore your petitioner will pray that this Honorable Court uphold his Constitutional Rights and that petitioner be brought before this Court for a trial by Jury or that the Charge be Dismissed for want of Prosecution.

It is possible that the Court may question the issuance of this Writ since your Petitioner is being held in the United States Penitentiary at Alcatraz, California. Toward that your Petitioner wishes to state that such an issuance is legal and just, in that the Writ issued by the State of Florida, for the production of Petitioner is not directed against the State of California, but to the contrary, since the Writ for the Production of Petitioner, will be against the Government of the United States, the law of which is sovereign and recognizes no Boundaries for the purpose of Criminal Prosecution.

Your Petitioner hereby sets out the following Cited Cases directly in point with this cause;

In Cato vs. Smith, C.C.A.; Col. 104 F. (2nd) 885, 308, 60 S. Ct. 177, 846 ed. 508, the Court Said: *The fact that a Federal Prisoner Indicted In a State Court must remain In the custody of a Federal Agent During Trial in a State Court does not deprive the State Court, and the Defendant, can conduct His defense as Effectively as if He were in the Custody of an Officer of the State Court.*

In U.S. vs. Cox, 5th Circuit, 47 F.ed. (2nd) P. 988, 989, The Court Stated; *The Rights Granted to the Defendant to have a Fair and Speedy trial is not Lost to Him or in any Substantial way abridged because of his*

being confined in a penitentiary. Also See; Pose vs. Tissondin, 258 U.S. 254.

In U.S. vs. Elesupous, O.C. New Jersey, 1942 U.S. Supp 777, The Court stated the following: *The reason for Granting an immediate Trial or to Dismiss the Indictment, Is that in all delayed cases, the witnesses as to the Events occurring many months or years ago are not clear and for this reason among others the Congress of the United States imposed a Statute of Limitations, to prevent Long delayed Prosecutions.*

The due process of Law Clause of the fourteenth Amendment Gives the Federal Courts power and the duty to nullify detainers, and to enjoin further prosecutions or Harassments, In cases where a State denies the demands of an Accused for Speedy Trial.

In People vs. Becker, 135 Misc. 405; the court had this to say; *When a person charged with a crime is willing to proceed at once to trial, no delay on the part of the Prosecution is reasonable, Except that which is necessary for Proper Preparation and to secure witnesses.*

In People vs. Vitusky; 155 App. Dive. 139; People vs. Walch; 172 App. Dive. 2261. The court had this to say; *Criminal Procedure provides for the dismissal of Criminal action for want of Prosecution upon the application of Defendant.*

In People vs. Harris; (1944) 182 Misc. 787, the Court Said; *An Indicted Person so entitled to a speed trial may insist upon a trial or the dismissal of the Indictment.*

In Reit vs. Meyer, 160 App. Dive. 752, 146, The Court had this to say; *Prisoner against whom another charge, other than the one which he was convicted, is entitled to a fair and speedy trial thereon.* Also See: People vs. Corrando, 150 Misc. 787, 270.

In People vs. Evans; 224 App. Dive. 415; The Court Said: *Rights of People of alleged crimes cannot be disregarded.* Also See; Thornton vs. State; 7 Ga. App. 752. 67 S.E. 10 55., State vs. White; 264 page 647, 39 Okla, 242., Gains vs. Washington; 227 U.S. 81, 48 Sct. 468., Washington vs. U.S. 1 F. 2d. 154 (e.e. A.7)., Raimo vs. State of New Jersey, Nov. 10th, Nov. 20th (1958)., Fowler vs. Hunter; 1947, e.e. A., 10, 164 F. 2d. 668.,

Petitioner states in view of the above cited cases there should be no doubt as to the legality of this cause. However your petitioner will set out the following authority of Law, showing that your Petitioner can be obtained for trial in this Honorable Court.

The Legality of such a cause is to be found on page 719 Bulletin No. 384 of the manual of Policies and Procedure, issued by the United States Department of Justice, Federal Bureau of Prisons, The summary of which Follows: "An application for the production of a Federal Prisoner Should be submitted to the criminal division of the United States Department of Justice, Federal Bureau of Prisons, Washington 25, D.C., and the prisoner can be produced upon a writ arising out of a State Court.

And for such Writ your Petitioner will Ever Pray.

Petitioner alleges that the charge against him is false and that he did not commit the above mentioned crime. Petitioner requests the above named Respondent to permit and immediate trial, in order to enable your Petitioner to properly protest his right as guaranteed under the Constitution of the United States.

Your Petitioner now moves and prays this Honorable Court to Cause Petitioner to be brought to appear before it by means of the proper process of the Law, namely; a Writ arising out of this Court ordering Petitioner before it for a trial by Jury or that an order be issued Dismissing said Charge.

Petitioner further asks this Court to recognize that petitioner is a layman with little formal education and no training in the profersion of Law and therefore to give more heed to the intent and purpose of petitioner than to any possible errors of form or lack of proper legal terminology within this petition.

Respectfully Submitted

/s/ Robert Dean Dickey
ROBERT DEAN DICKEY
Petitioner

Subscribed and Sworn to before me this 29 day of October, 1962.

/s/ [Illegible]
Parole Officer

Parole Officer Authorized by Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

AFFIDAVIT OF POVERTY

Pursuant to the Laws of the State of Florida

I certify that, first being duly sworn according to Law, deposes and say; that he is a poor person without sufficient funds in which to pay for the costs connected with this action, However Affiant verily believes that he is entitled to the redress Sought. Therefore Affiant will ever pray that this action be allowed at the expense of the State of Florida, which is proper by Law. Further —that the above action be entered and docketed so as to have justice served.

Respectfully Submitted

/s/ Robert Dean Dickey
ROBERT DEAN DICKEY
Affiant

Subscribed and Sworn to before me this 29 day of October, 1962.

/s/ [Illegible]
Parole Officer

Parole Officer Authorized by Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing action upon this Honorable Court by placing a copy of same in the U.S. Mail, Postage Prepaid, addressed to the Clerk of the above named Court.

/s/ Robert Dean Dickey
ROBERT DEAN DICKEY
Petitioner

Subscribed and Sworn to before me this 29 day of October, 1962.

/s/ [Illegible]
Parole Officer

Parole Officer Authorized by Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

ROBERT DEAN DICKEY, PETITIONER

vs.

WILLIAM D. HOPKINS, State Attorney,
Gadsden County, Florida, RESPONDENT

Petitioner has filed in this Court pleadings entitled "Writ of Habeas Corpus Ad Prosequendum", in which the State Attorney of this Judicial Circuit is named respondent.

If this pleading is regarded as a Petition for a Writ of Habeas Corpus it must be denied for three reasons. There is no showing that petitioner is being illegally restrained of his liberty. If he is illegally restrained of his liberty it is by the United States of America and this Court lacks jurisdiction to review judgments of Federal Courts. There is no showing that petitioner is in the custody of or under control of the named respondent —Honorable William D. Hopkins, State Attorney.

But petitioner prays that any informality in his Petition be overlooked and that his rights be protected. The Court will, therefore, consider the petitioner's basic complaint with the view of determining what, if any, relief he may be entitled to seek at this time.

Petitioner is charged with a criminal offense in Florida. He is presently confined in a Federal prison as a result of conviction of a federal offense. He seeks to *require* the State of Florida to bear the expense of securing a loan of his person from the Federal government and have him brought to Florida for trial. Otherwise, he says, he is being denied the right to a speedy trial. He is not entitled to this relief for three reasons:

1. Petitioner's present inability to voluntarily appear and demand a trial in Florida is due to his voluntary act in committing a Federal crime, the natural result of which was his imprisonment in a Federal penitentiary.

His absence from Florida and the delay in his trial is thus, in law, entirely voluntary on his part.

2. The petitioner's opinion that he cannot get a fair trial in Florida after the expiration of his Federal sentence is not necessarily correct—witnesses may or may not be unavailable—their memories may or may not be faulty. If the circumstances of a particular case are such that a fair trial cannot be had because of delay, that question can only properly be raised and decided when the defendant is brought before the proper court for arraignment.

3. If petitioner is being improperly denied a trial at this time, this is not the act of Florida. It is the act of the United States. If petitioner's present inability to appear voluntarily in Florida and demand a trial is violating a constitutional right under the Sixth Amendment (a question not being decided) that is the act of Federal authorities and petitioner's source of relief, if any, is with Federal authorities.

Petition Denied.

DONE at Quincy, Florida this 1st day of December, A. D. 1962.

/s/ Hugh M. Taylor
Circuit Judge

IN THE SUPERIOR COURT
FOR GADSDEN COUNTY
GADSDEN, FLORIDA

No.

ROBERT DEAN DICKEY, PETITIONER

—*versus*—

WILLIAM D. HOPKINS, State Attorney,
Gadsden County, Florida, RESPONDENTS

WRIT OF HABEAS CORPUS AD-PROSEQUENDUM
April 1, 1963

As per Judge Taylor's request, a certified copy of Denial of Petition mailed to Robert Dean Dickey 12/5/62.

I Robert Dean Dickey hereafter known as the petitioner in the foregoing action, first being duly sworn by the Undersigned Parole Officer, according to Law, depose and says that he is a Citizen of the United States of America, by birth, who hereby petitions this Honorable Court for Writ of Habeas Corpus *Requesting The Above Named Respondent to Show Cause Why He Is Violating your Petitioners Constitutional Rights As Guaranteed By The Sixth And Fourteenth Amendments of The United States Constitution.*

Petitioner states that he is presently confined in the United States Penitentiary at Leavenworth, Kansas by virtue of a sentence imposed upon him by a United States District Court.

Petitioner further states that the aboved named Respondent is holding a warrant for the Arrest of your petitioner Charging, "Armed robbery" said Warrant has been in effect since on or about the 1st day of July, 1960, thus depriving petitioner of his rights as guaranteed by the Sixth Amendment of the United States Constitution, Since said warrant has not been executed in a fair and speedy trial.

If the Court please note: The Sixth Amendment of The United States Constitution Provides That: In All Criminal Prosecutions The Accused Shall Enjoy The Right to A Speedy and public Trial. The Usual method for The Enjoyment of this Protection Is to Ask for A Trial. Continuing. It Is Stated, "One Already Serving a term may be tried on Charges Pending Against Him because of This Valuable Guarantee." see: McCarty vs. U.S. (8th Cir.) 19 F. (2nd) 462; Whitaker vs. Humming (9th Cir.) 19 F. (2nd) 760; Beaver vs. Hanbert, 198 U.S. 77. 25, 5. Ct. 573. 49. Led. 950.

Therefore your petitioner will pray that this Honorable Court uphold his Constitutional Rights and that petitioner be brought before this Court for a trial by Jury or that the Charge be Dismissed for want of Prosecution.

If is possible that the Court may question the issuance of this Writ since your Petitioner is being held in the United States Penitentiary at Leavenworth, Kansas toward that your Petitioner wishes to state that such an issuance is legal and just, in that the Writ issued by the State of Florida, for the production of Petitioner is not directed against the State of Kansas, but to the contrary since the Writ for the Production of Petitioner, will be against the Government of the United States, the Law's of which is sovereign and recognizes no Boundaries for the purpose of Criminal Prosecution.

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In Reit vs. Myer, 160 App. Dive. 752, 146, The Court had this to say; *Prisoner against whom another charge other than the one which he was convicted, is entitled to a fair and speedy trial thereon* Also See: People vs. Corrando, 150 Misc. 787, 270.

In People vs. Evans; 224 App. Dive. 415; The Court Said: *Rights of People of alleged crimes cannot be disregarded.* Also See; Thornton vs. State; 7 Ga. App. 752 67 S.E. 1055., State vs. White; 264 page 647, 39 Okla, 242., Gains vs. Washington; 227 U.S. 81, 48 S.ct. 468., Washington vs. U.S. 1 F 2d 154 (e. e. r. 7)., Raimo vs. State of New Jersey, Nov. 10th, Nov, 20th (1958)., Fowler vs. Hunter; 1947, e.e.r., 10, 164 F 2d. 668.,

Petitioner states in view of the above cited cases there should be no doubt as to the legality of this cause. However your petitioner will set out the following authority of law showing that your Petitioner can be obtained for trial in this Honorable Court.

The Legality of such a cause is to be found on page 719 Bulletin No. 384 of the manual of Policies and Procedure, issued by the United States Department of Justice, Federal Bureau of Prisons, The summary of which Follows: "An application for the production of a Federal Prisoner Should be submitted to the criminal division of the United States Department of Justice, Federal Bureau of Prisons, Washington 25, D.C., and the prisoner can be produced upon a writ arising out of a State Court.

And for Such Writ your Petitioner will Ever Pray.

Petitioner alleges that the charge against him is false and that he did not commit the above mentioned crime. Petitioner requests the above named Respondent to permit and immediate trial, in order to enable your Petitioner to properly protest his right as guaranteed under the Constitution of the United States.

Your Petitioner now moves and prays this Honorable Court to Cause Petitioner to be brought to appear before it by means of the proper process of the Law, namely, a Writ arising out of this Court ordering Petitioner before it for a trial by Jury or that an order be issued Dismissing said Charge.

Petitioner further asks this Court to recognize that petitioner is a layman with little formal education and no training in the profersion of Law and therefore to give more heed to the intent and purpose of petitioner than to any possible errors of form or lack of proper legal terminology within this petition.

Respectfully Submitted

/s/ Robert Dean Dickey
ROBERT DEAN DICKEY
Petitioner

Subscribed and Sworn to before me this 1st day of April, 1963.

/s/ [Illegible]
Parole Officer

Authorized by the Act of July 7, 1955 to administer oaths (18 U.S.C. 4004).

AFFIDAVIT OF POVERTY

Pursuant to the Law's of the State of Florida

I certify that, first being duly sworn according to Law, deposes and say; that he is a poor person without sufficient funds in which to pay for the costs connected with this action, However affiant verily believes that he is entitled to the redress Sought. Therefore Affiant will ever pray that this action be allowed at the expense of the State of Florida, which is proper by Law. Further—that the above action be entered and docketed so as to have justice served.

Respectfully Submitted

/s/ Robert Dean Dickey
ROBERT DEAN DICKEY
Affiant

Subscribed and Sworn to before me this 1st day of April, 1963.

/s/ [Illegible]
Parole Officer

Authorized by the Act of July 7, 1955 to administer oaths (18 U.S.C. 4004).

[Certificate of Service (Omitted in Printing)]

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

ROBERT DEAN DICKEY, PETITIONER

vs.

WILLIAM D. HOPKINS, State Attorney,
Gadsden County, Florida, RESPONDENTS

ORDER—April 15, 1963

This cause coming on to be heard upon a new Petition filed by the Petitioner which is largely a repetition of the original Petition heretofore considered by the Court and the merits of which have been fully discussed in the Order of this Court entered on the 1st day of December, 1962, it is

CONSIDERED, ORDERED and ADJUDGED by the Court that the Petition of Robert Dean Dickey for Writ of Habeas Corpus against the Respondent, William D. Hopkins, State Attorney, Gadsden County, Florida, be and the same is hereby denied.

DONE and ORDERED this 15th day of April, A. D. 1963.

/s/ Hugh M. Taylor
Circuit Judge

IN THE SUPERIOR COURT
FOR GADSDEN COUNTY
QUINCY, FLORIDA

Re: Warrant No. ———

ROBERT DEAN DICKEY

vs.

STATE OF FLORIDA

Motion for Speedy Trial or, in the alternative, Dismissal of Warrant No. ——— represents as follows:

1. That there is pending in this court a warrant No. ——— charging petitioner with Armed Robbery.
2. That the petitioner is confined in the United States Penitentiary at Leavenworth, Kansas for a term of 15 years.
3. That petitioner will not be released until 1971.
4. That the petitioner presently has a valid defense to the charge contained in the foresaid warrant and is ready for trial.
5. That the witnesses now available for the petitioner's defense may not be available at some future date.
6. That the petitioner cannot safely go to trial without the witnesses for his defense and will not enjoy *Due Process of Law* if he is deprived of his defense witnesses by reason of the State of Florida's delay in bringing him to trial.
7. That under existing Federal Law and upon proper application by the authorities of the State of Florida, the petitioner is now available to the jurisdiction of this court for the limited purposes of affording him his Constitutional Rights to a Speedy Trial.

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION

The petitioner is guaranteed a speedy trial by the Constitution of the *United States and the State of Florida.* The Sixth Amendment is binding on the State Courts by provisions of the Fourteenth Amendment of the Federal Constitution. While one in prison need not

make a demand for a speedy trial (*22 C.J.S. Criminal Law 467, p. 716*), a formal demand raises a bar to subsequent prosecution. *Pietch* vs. *United States*, 10 Cir. 1940, 110 F. 2d 817.

See *Harrell* vs. *State*, 41 Okl. Cr. 350.227, p. 1038.

There is available to the District Attorney of Gadsden County, State of Florida, a process for obtaining the limited custody of the petitioner for the purpose of affording him a speedy trial. Application must be made to United States District Chief Judge G. Harrold Carswell, Tallahassee, Florida for a writ of habeas corpus ad prosequendum (state writ), Section 2241(5), Title 28 USC. This procedure will produce the petitioner for the limited purpose of affording him a trial on the State charge pending in Gadsden County, Florida. This procedure has been approved by the United States Supreme Court: *Ponzi* vs. *Fessenden*, 258 U.S. 254, 265-266, 42 S. Ct. 309, 212. See also the recent case of *Taylor* vs. *United States*, 1958 238 F. 2d 259.

Upon application for a speedy trial it has been held neglect by official duty such to deny an application, *State* vs. *Dewey*, 73 Kansas 735, 88 p. 881-882; *State* vs. *Sims*, 1 Tenn. 253; in *Fouts* vs. *United States*, 253 F. 2d 215, that court held:

> "It is established that the accused does not forfeit his rights to a speedy trial solely because of his being confined in a penitentiary."

And the accused is entitled to dismissal for denial of due process. *State* vs. *Carrille*, 41 Ariz. 170 16 P. 2965;
State vs. *Brodie*, 7 Wash. 442, 35 P. 137.
Newlin vs. *People*, 221, Ill. 106, 77 N.E. 529;
Keller vs. *State*, 185 N.E. 417 Ohio S. Ct. 342;
Shafer vs. *States*, 183 N.E. 774, 43 Ohio App. 493;
Frankel v. *Woodrough*, C.C.A. Neb. 7 F. 2d 796.
In the case of *White*, 1928, 264 P. 647, 39 Akl. Cr. 242 was ruled:

> "Federal prisoners with the United States Attorney General's consent may be taken on habeas corpus ad prosequendum into State Court, regardless of lack of express statute."

The petitioner by his sworn statements has raised the issue that if he is not brought to trial forthwith he will be unable to get a fair trial on the warrant pending against him in Gadsden County, State of Florida.

It is of public interest that he be given a fair trial and it is of interest to the State of Florida that the case be disposed of according to law and justice, and for these reasons the motion should be granted as a denial of the motion will set a bar to any subsequent prosecution under the said warrant. The issue that the petitioner cannot receive a fair trial will be raised on any extradition proceedings the State of Florida may institute at any subsequent time to obtain custody of petitioner.

WHEREFORE, the petitioner respectfully prays this court to issue an order directing the District Attorney of Gadsden County, State of Florida, to take the necessary steps to obtain the custody of petitioner for the limited purpose of affording him a speedy trial contained in the charge of the warrant against him, or in the alternative, that the aforesaid warrant be dismissed for lack of prosecution no later than the next term of this court.

Respectfully submitted,

/s/ Robert Dean Dickey
ROBERT DEAN DICKEY
80533, Box 1000
Leavenworth, Kansas 66048

STATE OF KANSAS

ss

COUNTY OF LEAVENWORTH

Subscribed and sworn to before me this 28th day of March, 1966.

/s/ [Illegible]
U. S. Parole Officer

Authorized by the Act of July 7, 1955 to administer oaths (18 U.S.C. 4004).

[Proof of Service (Omitted in Printing)]

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

ROBERT DEAN DICKEY

vs.

STATE OF FLORIDA

The subject matter of the petition filed herein by the defendant, Robert Dean Dickey, has already been disposed of by prior order of this Court dated December 1, 1962.

Done at Quincy, Florida this 13th day of April, A.D. 1966.

/s/ Hugh M. Taylor
Circuit Judge

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

ROBERT DEAN DICKEY, PETITIONER

vs.

WILLIAM D. HOPKINS, State Attorney,
Gadsden County, Florida, RESPONDENT

PETITION FOR DISMISSAL—September 1, 1967

Comes now Petitioner Robert Dean Dickey, Pro Se, and respectfully moves the court for an order commanding the respondent to dismiss and withdraw detainer of warrant lodged against petitioner for the following reasons.

1. On June 14, 1967 the Supreme Court of Florida, Case No. 35,418, entitled Robert Dean Dickey vs. Circuit

Court, Gadsden County, Quincy, Florida, ruled that petitioner herein had been denied a speedy trial as afforded by the Sixth Amendment to the United States Constitution and Chapter 915, F-S- which is designed to implement the right of speedy trial guaranteed by Section 11, Declaration of Rights, Florida Constitution (See: Exhibit A attached).

2. In conforming with said ruling of the Supreme Court of Florida, Petitioner herein states:

A. Petitioner is a United States Prisoner under the legal custody of the United States Attorney General, and presently imprisoned in the U. S. Penitentiary, Leavenworth, Kansas.

B. Petitioner is presently serving three (3) consecutive sentences of five (5) years and his tentative expiration date is *January, 1971.*

C. The nature of the charge pending against petitioner to the best of his knowledge, is armed robbery. Which charge is pending in this circuit court Gadsden County, Florida and was filed on or about the 28th day of June 1960.

D. The Respondent has caused a detainer warrant to be filed against Petitioner herein, with the Sheriff of Leavenworth County, Kansas and with the Warden of said U.S. Penitentiary, Leavenworth, Kansas, where he is being held.

E. Petitioner has requested of the respondent on *29th day of October 1962* that he be given a Speedy Trial and again on *April 1, 1963* and on the *28th day of March 1966* he requested this court to direct the respondent to furnish him with a Speedy Trial, which requests, motions and petitions were all denied.

Because the Supreme Court of Florida ruled in Dickey v. Circuit Court, Gadsden County, Quincy, Florida, Supra, that:

> In summary we here hold that one who is held in custody by another sovereign and who is also accused of a crime in this state, as a result of which a detainer warrant has been lodged against the accused, the accused has the constitutional right to

demand that Florida initiate the procedure available to it to secure the return of the accused here for a speedy trial. . . . (Exhibit A, Page 12).

Petitioner again, herein prays, that this Honorable Court will direct the respondent herein to remove and dismiss the detainer warrant pending against him from Gadsden County, Quincy, Florida. As his Constitutional Right to a Speedy Trial has been denied him by laches of the respondent herein, and will ever pray.

DATED September 1st 1967.

STATE OF KANSAS)
) SS
COUNTY OF LEAVENWORTH)

Respectfully Submitted,

/s/ Robert D. Dickey
ROBERT DEAN DICKEY
80533
Leavenworth, Kansas

Subscribed and sworn to before me this 1st day of September 1967.

/s/ A. T. Miller
A. T. MILLER
Class. & Parole

"Authorized by the Act of July 7, 1955 to administer oaths (18 U.S.C. 4004)."

[Proof of Service (Omitted in Printing)]

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

THE STATE OF FLORIDA

vs.

ROBERT DEAN DICKEY, DEFENDANT

ORDER FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM—December 15, 1967

This matter coming on before me this day, ex parte, upon the Petition of the State of Florida for a Writ of Habeas Corpus Ad Prosequendum as to the above named defendant, and the Court being advised in the premises, it is, therefore

ORDERED that the Clerk of this Court be, and he is hereby, directed to issue a Writ of Habeas Corpus Ad Prosequendum to the Warden, United States Penitentiary, Leavenworth, Kansas and the United States Marshal, Northern District of Florida and/or his deputies, to cause the said defendant presently confined in that institution to be brought before this Court at Quincy, Florida at ten o'clock, A. M., on the 23rd day of January, A. D., 1968, at the expense of the State of Florida and/or Gadsden County, Florida, and thereafter the defendant to be returned to the custody of said Warden as soon as he has been excused.

DONE and ORDERED this 15th day of December, A. D., 1967.

/s/ [Illegible]
Circuit Judge

IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF FLORIDA

In the Circuit Court of the Second Judicial Circuit of the State of Florida, for GADSDEN County, in the year of our Lord One Thousand Nine Hundred and SIXTY SEVEN,

BE IT REMEMBERED, That William D. Hopkins, State Attorney for the Second Judicial Circuit of the State of Florida, prosecuting for said State, being present in said Court on the 15th day of December, 1967, gave the court to be informed and understand that, ROBERT DEAN DICKEY late of the County of Gadsden, in the Circuit and State aforesaid, on the 28th day of June in the year of our Lord One Thousand Nine Hundred and Sixty, in the County of Gadsden aforesaid, did then and there by force, violence or assault, or putting in fear, feloniously rob, steal and take away from the person or custody of Mrs. Ralph Clark certain property then and there the subject of larceny, to-wit: United States Currency or money of the value of $40.00 of the property, goods and chattels of Clarks Motor Court, a better description thereof being to your informer unknown;

THAT Deputy Robert Martin did on the 1st day of July, 1960 appear before the Honorable A. B. Blackburn, Justice of the Peace, First District, Gadsden County, Florida, and did make affidavit charging said defendant ROBERT DEAN DICKEY with Robbery, copy of such Affidavit being attached hereto and made a part of this Information;

THAT pursuant to the filing of said Affidavit and based thereon the Honorable A. B. Blackburn as Justice of the Peace, First District, Gadsden County, Florida, issued a Warrant under seal of the Justice of the Peace charging said ROBERT DEAN DICKEY with the offense of Robbery, copy of said Warrant being attached hereto and made a part of this Information; and did on July 1, 1960 deliver said warrant to the Sheriff of Gadsden County, Florida for service;

against the form of the statute in such case made and provided, to the evil example of all others in the like case of offending, and against the peace and dignity of the State of Florida.

/s/ William D. Hopkins
State Attorney for the Second Judicial Circuit of the State of Florida, prosecuting for said State aforesaid.

STATE OF FLORIDA)
) ss.
COUNTY OF GADSDEN)

Personally appeared before me, William D. Hopkins, State Attorney for the Second Judicial Circuit of Florida, who being first duly sworn says that the allegations set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true would constitute the offense therein charged.

Sworn and subscribed to before me this 15th day of December A. D., 1967

/s/ William D. Hopkins
State Attorney

/s/ Edwin Baur
Clerk of Circuit Court [SEAL]
Gadsden County

Arraigned _____ Plead _____

SENTENCE _____

_____

_____

IN CIRCUIT COURT
GADSDEN COUNTY, FLORIDA

THE STATE OF FLORIDA

vs.

ROBERT DEAN DICKEY

INFORMATION FOR ROBBERY

67-19-138.

Filed in Court Dec 15 1967, Edwin Baur,
Clerk of Circuit Court

STATE WITNESSES

Mrs. Ralph Clark
Deputy Robert Martin

AFFIDAVIT

IN JUSTICE OF PEACE COURT
FIRST DISTRICT, GADSDEN COUNTY
STATE OF FLORIDA

STATE OF FLORIDA

vs.

ROBERT DEAN DICKEY

Before me, a Justice of the Peace in and for said County, personally came Robert Martin, who, being duly sworn, says that on the 28th day of June, A. D. 1960, in the County and District aforesaid, one Robert Dean Dickey, did then and there by force, violence or assault or or putting to fear, feloniously rob, steal and take away from the person or custody of Mrs. Ralph Clark, certain property then and there the subject of larceny, to-wit;

United States Currency or money of a value of $40.00, of the property, goods and chattels of Clarks Motor Court; a better description being to your informer unknown, contrary to the statute in such case made and provided, and against the peace and diginity of the State of Florida.

Sworn to and subscribed before me this 1st day of July, 1960

A. B. Blackburn (L.S.)
Justice of the Peace

Signed Robert Martin

State of Florida
Gadsden County

I, A. B. Blackburn Justice of the Peace District One Gadsden County Florida. Certify that the foregoing is a true copy of affidavit filed with me, and that the original of same was signed Robert Martin, on July 1st, 1960 This the 27th day of September 1967

Signed A. B. Blackburn

IN JUSTICE COURT,
FIRST DISTRICT,
GADSDEN COUNTY,
STATE OF FLORIDA

STATE OF FLORIDA

vs.

ROBERT DEAN DICKEY

AFFIDAVIT

For Armed Robbery

A. B. BLACKBURN
Justice of the Peace.

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

Case No.

STATE OF FLORIDA

v.

ROBERT DEAN DICKEY, DEFENDANT

MOTION FOR CONTINUANCE—January 30, 1968

Comes now the defendant by his undersigned attorney and moves this Court for continuance of the above styled cause set for trial on Wednesday, January 31, 1968. In support of said motion, defendant would show as follows:

1. That two essential witnesses are absent, to wit: A. C. Bud Strickland, whose last known address was Veterans' Administration Hospital, Lake City, Florida, and E. D. Dolan, whose last known address was 9955 Bradley Road, Jacksonville, Florida.

2. The facts expected to be proved by the witness Strickland: The witness will state that he knew and saw defendant on the date of the alleged offense, June 28, 1960, in Waycross, Georgia, thus establishing defendant's alibi that he was not in Quincy, Florida, on the date of the alleged offense and that in truth and fact he was in Waycross, Georgia.

3. The facts expected to be proved by the witness Dolan: He had come into Clark's Motor Court on several occasions with defendant in the course of their employment. Thus Mrs. Clark had seen defendant on several occasions prior to the alleged robbery. Such testimony would, therefore, corroborate the purported testimony of defendant that he would not have robbed Mrs. Clark since she in fact knew and could have recognized him on the date of the alleged offense due to the fact that he had been at Clark's Motor Court on several previous occasions prior to the time of the robbery.

4. The testimony of these witnesses is material and essential and in support of testimony to be given by the defendant, Robert Dean Dickey. Such testimony cannot be proved by any other available witnesses.

5. These witnesses, to the best of affiant's knowledge and belief, are legal residents of the State of Florida.

6. Due diligence has been used to obtain the presence of these witnesses, but service of summons has not been effected upon the witnesses as of the date of this affidavit.

7. These witnesses are not absent through procurement, connivance or consent directly or indirectly either of the applicant or of the defendant to the best of the applicant's knowledge.

8. Applicant believes that this cause cannot be tried with justice to the defendant without the purported testimony of such witnesses.

9. Applicant received information from the defendant that the above two witnesses could testify, if present, in the manner as outlined under paragraphs 2 and 3 above.

10. It is believed that the witnesses will be present at a designated time not later than the next term of court or that their depositions will be obtained.

/s/ Richard W. Ervin, III
RICHARD W. ERVIN, III
Public Defender
Second Judicial Circuit

Sworn to and subscribed before me this 30 day of January, 1968.

/s/ Georgene I. Bradbeck
Notary Public
Notary Public State of Florida at Large
My Commission Expires Aug. 22, 1970
Bonded Through Fred W. Diestelhorst

[Certificate of Service (Omitted in Printing)]

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

Case No.

STATE OF FLORIDA

v.

ROBERT DEAN DICKEY, DEFENDANT

MOTION TO QUASH—January 30, 1968

Comes now Robert Dean Dickey, by his undersigned attorney, and moves to quash the information filed against him in the above styled cause on the following grounds:

1. If defendant is tried on the charge now pending against him, it would deny him of his constitutional right to speedy trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Section 11, Declaration of Rights, Florida Constitution. The pleadings attached to the court file herein show that on October 29, 1962, April 1, 1963, and March 28, 1966, defendant requested the State of Florida to give him a speedy trial or to release him. At the time defendant filed said motions, he was in federal custody serving a fifteen year sentence imposed in September, 1960, by the United States District Court for the Northern District of Florida. By orders entered in December, 1962, April, 1963, and April, 1966, Hugh M. Taylor, Judge of the Circuit Court in and for Gadsden County, Florida, denied the relief requested. The offense in the above styled cause is alleged to have occurred June 28, 1960. The case has been set for trial January 31, 1968. Thus seven and one-half years have elapsed between the date of the alleged offense and the date set for trial.

Furthermore, defendant would show that the delay caused by the State's refusal to grant him a speedy trial has prejudiced him in receiving a fair trial since an essential and material witness on defendant's behalf is

now deceased. In support of this allegation, defendant has attached hereto an affidavit showing that Mrs. Hazel Varnadore, 42 East Marion Street, Chattahoochee, Florida, died during the year 1964. If she were living, the said witness would have testified upon information and belief that she was the sister of defendant, that she knew and recognized his voice, and that at approximately 12:15 o'clock a.m. the morning of June 28, 1960, she received a telephone call from defendant from Waycross, Georgia, thus establishing defendant's alibi that he was not in Quincy, Florida, on the date and at the time the alleged offense occurred, thus refuting the purported testimony of Mrs. Ralph Clark, who allegedly will testify that defendant robber her on June 28, 1960, at approximately 2 o'clock a.m. Such evidence then would tend to corroborate defendant's testimony that he was not in the vicinity of Quincy, Gadsden County, Florida, on the date and time alleged. Therefore, for the reasons stated, the State's failure to grant to him a speedy trial is violative of the aforestated provisions of the Florida and United States Constitutions and further it would be prejudicial to cause him to defend the case since an essential witness is now deceased.

2. As a second alternative ground, defendant would show that the offense of armed robbery is alleged to have occurred on June 28, 1960, but that the information was not filed until December 15, 1967. While the information does recite that an affidavit and warrant were issued on July 1, 1960, the return on the warrant does not indicate a date of issuance or delivery. Therefore, the prosecution was not commenced within the statutory time prescribed by law and the information should therefore be quashed.

3. As a third alternative ground for relief, there is attached hereto affidavit of defendant showing that on or about July 1, 1960, he was taken into custody of the United States of America for the offenses of bank robbery which occurred on or about June 17, 1960 and July 1, 1960. The affidavit further shows on its face that defendant was in custody of the United States of America and within the territorial boundaries of the State

of Florida awaiting the disposition of federal criminal charges against him from on or about the first day of July, 1960 until September 12, 1960. The information states on its face that the arrest warrant was issued July 1, 1960. Thus there was ample time for the State of Florida, if it so wished, to have arrested defendant on the said charges of armed robbery and to have commenced prosecution against defendant before he was transferred from the territorial confines of the State of Florida. To delay the cause thereby was prejudicial to the defendant and was a denial of his constitutional right to a speedy trial.

/s/ Richard W. Ervin, III
RICHARD W. ERVIN, III
Public Defender
Second Judicial Circuit
Attorney for Defendant

[Certificate of Service (Omitted in Printing)]

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

Case No.

STATE OF FLORIDA

v.

ROBERT DEAN DICKEY, DEFENDANT

AFFIDAVIT—Filed January 31, 1968

STATE OF FLORIDA
COUNTY OF GADSDEN

Before me, the undersigned authority, personally appeared Robert Dean Dickey, who, being by me first duly sworn, deposes and says:

1. That he is the defendant in the above styled cause.
2. That the offense filed against him is alleged to have occurred on June 28, 1960.
3. That he has filed motions before this Court on October 29, 1962, April 1, 1963, and March 28, 1966, requesting that the State of Florida give to him a speedy trial.
4. That defendant would have subpoenaed to testify in his behalf at the time of the trial set for January 31, 1968, Mrs. Hazel Varnadore, 42 East Marion Street, Chattahoochee, Florida, who died during the year 1964.
5. Affiant avers that the testimony of Mrs. Varnadore was essential and material to a proper defense of this cause for the following reasons:

(a) It is believed that the State's primary witness, Mrs. Ralph Clark, will testify that defendant robbed her in the early morning of June 28, 1960, at approximately 2 o'clock a.m.

(b) Mrs. Varnadore would have testified that she had known defendant for a long period of time, that she knew his voice, and that at approximately 12:15 a.m. on the

morning of June 28, 1960, she received a telephone call from defendant from Waycross, Georgia.

(c) This testimony would therefore corroborate defendant's testimony that he was not in the vicinity of Quincy, Gadsden County, Florida, on the date and time of the alleged robbery.

6. Defendant further avers that on or about July 1, 1960, he was taken into the custody of the United States of America for offenses of bank robbery. Defendant was in the custody of the United States within the territorial boundaries of the State of Florida awaiting disposition of federal criminal charges against him on or about the first day of July, 1960 until September 12, 1960. Thus there was ample time for the State of Florida, if it so wished, to have delivered any arrest warrant alleged to have been issued on July 1, 1960, prior to his removal from the State of Florida to serve a 15 year sentence for two counts of bank robbery and one count of escape, which sentence has not yet expired.

/s/ Robert D. Dickey
ROBERT DEAN DICKEY

Sworn to and subscribed before me this 31 day of January, 1968.

/s/ Edwin Baur,
Clerk Circuit Court
Gadsden County, Florida
By Oma M. Hathcock,
Deputy Clerk

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

Case No.

STATE OF FLORIDA

v.

ROBERT DEAN DICKEY, DEFENDANT

SECOND MOTION FOR CONTINUANCE—February 12, 1968

Comes now the defendant by his undersigned attorney and moves this Court for continuance of the above styled cause set for trial on Tuesday, February 13, 1968. In support of said motion, defendant would show as follows:

1. That an essential witness, A. C. Bud Strickland, whose last known address is Savannah, Georgia, is absent.

2. The facts expected to be proved by the witness: The witness will state that he knew and saw defendant on the date of the alleged offense, June 28, 1960, in Waycross, Georgia, thus establishing defendant's alibi that he was not in Quincy, Florida, on the date of the alleged offense and that in truth and fact he was in Waycross, Georgia.

3. The testimony of this witness is material and essential and in support of testimony to be given by the defendant, Robert Dean Dickey. Such testimony cannot be proved by any other available witness.

4. Due diligence has been used to obtain the presence of this witness, but service of summons has not been effected upon the witness as of the date of this affidavit.

5. This witness is not absent through procurement, connivance or consent directly or indirectly either of the applicant or of the defendant to the best of the applicant's knowledge.

6. Applicant believes that this cause cannot be tried with justice to the defendant without the purported testimony of such witness.

7. Applicant received information from the defendant that A. C. Bud Strickland can testify in the matter as outlined under paragraph 2 above.

8. It is believed that the witness will be present at a designated time not later than the next term of court or that his deposition will be obtained.

/s/ Richard W. Ervin, III
RICHARD W. ERVIN, III
Public Defender
Second Judicial Circuit
Attorney for Defendant

Sworn to and subscribed before me this 12th day of February, 1968.

/s/ Georgene I. Bradbeck
Notary Public
Notary Public State of Florida at Large
My Commission Expires Aug. 22, 1970
Bonded Through Fred W. Diestelhorst

[Certificate of Service Omitted in Printing]

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

Case No.

STATE OF FLORIDA

v.

ROBERT DEAN DICKEY, DEFENDANT

ORDER DENYING MOTION TO QUASH—February 13, 1968

This cause coming on before me on defendant's Motion to Quash, all grounds alleged therein being carefully considered by the Court, and hearing having been held thereon, it is hereby

ORDERED AND ADJUDGED that defendant's Motion to Quash be denied.

DONE AND ORDERED this 13th day of February, 1968.

/s/ Guyte P. McCord, Jr.
GUYTE P. MCCORD, JR.
Circuit Judge

[fol. 56]

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

Q Is that the only change?

A And he's wearing glasses and he's put on a little weight and his complexion is a lot lighter than it was then.

Q Will you tell me again, now, the exact description that you gave Deputy Martin when you reported the robbery?

A I told him that he had on sport clothes. I think the pants were gray and this checked shirt or plaid shirt, whichever you want to call it, and that it was cut straight around the bottom and it was not tucked into his pants. It was hanging on the outside.

Q What else?

A That's all he had on that I saw was the checked shirt and the gray pants.

Q You must have given some more description to Robert Martin.

A I just told him in my mind what he looked like.

Q Well, what did you tell him?

A I told him that I thought he weighed about 165 pounds and that he was between 23 and 26 or 28 years old and I told him he was about 5 feet six inches or something like that, and I told Mr. Martin that I wasn't no judge of height or weight or age and then I just gave him the description.

Q What else did you tell him about him?

A That was all I could tell him about him.

Q Did you tell him about his hair or his eyes?

A I told him that his hair was cut short.

Q And when you say short, you mean shorter than mine?

A Yes.

[fol. 57] Q What color did you say that hair was?

A It was sandy or light colored.

Q And the eyes?

A I told him they were either blue or gray.

Q Did you give any other description to Robert Martin?

A No.

Q That's all you gave to him?

A As best I can remember, that's all I gave him.

Q Had you ever been robbed before, Mrs. Clark?

A No, sir.

Q Had you ever seen Robert Dickey in your place of business before?

A Not to my knowledge. When you work in the office and people are coming and going in the cafe, you can't see everybody that goes in and goes out. Not to my knowledge had I ever seen him there before.

Q Isn't it possible that you could have seen him and then transferred his face to the person who robbed you?

A (Witness shook head negatively.)

MR. BUCHANAN: No further questions.

REDIRECT EXAMINATION

BY MR. MORRISON:

Q I believe you mentioned that some moles had been taken from his face.

A He had some moles, four or five moles on his face, on this side of his face. I noticed that specifically while I was giving him the money. He had one along here and he had * * *

* * * *

[fol. 62] * * * whether or not he signed an affidavit has no bearing on this case.

THE COURT: Objection overruled.

Q Who did you sign an affidavit before?

A I signed the affidavit before Judge A. B. Blackburn, Justice of the Peace of the First District of Gadsden County.

Q Now, what did you sign an affidavit charging the defendant with?

A Robbery.

Q Do you know if a warrant was issued?

A Yes, sir.

MR. MORRISON: No further questions.

CROSS EXAMINATION

BY MR. BUCHANAN:

Q Deputy Martin, I believe the robbery occurred about 2:00 a.m. on June 28, 1960. Is that right?

A Yes, sir.

Q And Mrs. Clark called you and you responded immediately?

A Yes, sir.

Q What description did she give you of the man who held her up?

A She said that he was a little fellow and he had his hair cut short and kind of combed back and she said he had some moles on his face and she said that he wasn't too tall.

Q Did she tell you whether his hair was black or not?

A She did not say. She said he had dark hair.

[fol. 63] Q Dark hair?

A Yes, sir.

Q All right, how about his weight? What did she say about his weight?

A I don't remember whether she even gave his weight or not. She just said that he was kind of short and chunky.

Q All right, did she say that his hair was combed back?

A Said it was combed back, yes, sir.

Q Was it longer than mine?

A No, I wouldn't say it was longer than yours, the way she described it, but that it would be longer than his is now.

Q It was longer than his now?

A Right.

Q Now, did she describe his clothes?

A I don't remember whether she did or not.

Q You do not remember whether she described his clothes or not?

A She probably did but I don't remember.

Q How about his age, she never told you about his age?

A She could have but I don't remember.
Q What about his eyes?
A I don't know.
Q She didn't tell you about that?
A She could have and I'm not going to say she didn't.
Q You can't remember?
A No, I don't remember her saying about his age. [fol. 64] She most likely did, though.
Q Did you have your notes there or did you take any notes as to the description of the robber?
A I did.
Q Where are those notes?
A I don't know, sir. That has been a long time ago.
Q Well, are they destroyed or what?
A I imagine I throwed them away.
Q When did you throw them away, do you know?
A After he went off. I didn't know whether we would ever have him back here again or not.
Q Those notes would have been important for you to refresh your memory from, wouldn't they?
A I used the notes to put the description out on the radio and that's all.
Q So the notes probably indicated much better what—
A They would indicate exactly what she told me but I don't have them so I'm not going to tell you something that I'm not positive of.
Q So what you're saying is that after an eight year period it's difficult to recall what she told you?
A Well, all of it, yes, sir. I do recall some of it, though.
Q Okay, now I believe you brought her some pictures over from Tallahassee. Is that right?
A Yes, sir.
Q And these were for her to identify?

* * * * *

[fol. 67]

* * * I had told her.
Q And you all were letting her walk down the aisle?

A She was stopping in front of each cell and when she got to the cell where he was, she had looked at everyone of them, and she said that was him.

Q She had already seen the picture of Dickey before she went over there?

A Oh, yes.

Q Now, I believe you went into the affidavit, Deputy Martin. You went to Mr. Blackburn and executed an affidavit. Is that correct?

A An affidavit and a warrant.

Q And he issued you a warrant for his arrest, for Dickey's arrest?

A There were two affidavits and a warrant that he issued. I signed the two affidavits and there was a warrant, too.

Q When did you get that warrant?

A It was after she went over there and identified him.

Q That would have been around July 1, 1960, wouldn't it?

A I believe it was that Friday after I came back from over there when we went over and she identified him.

Q Now, did you ever execute that warrant?

A We sent it off to Atlanta.

Q When?

A Whenever he went to prison up there.

Q Wasn't it true that Dickey was in the State of Florida from * * *

* * * *

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1968

Case No. K-193

ROBERT DEAN DICKEY, APPELLANT

vs.

STATE OF FLORIDA, APPELLEE

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

OPINION—filed November 21, 1968

An Appeal from the Circuit Court for Gadsden County. Guyte P. McCord, Judge.

Richard W. Ervin, III, Public Defender; and John D. Buchanan, Jr., Assistant Public Defender, for Appellant.

Earl Faircloth, Attorney General; and George R. Georgieff, Assistant Attorney General, for Appellee.

PER CURIAM

This cause having been orally argued before the court, the briefs and record on appeal having been read and given full consideration, and appellant having failed to demonstrate reversible error, the judgment of the lower court hereby appealed is affirmed. See Dickey v. Circuit Court, (Fla. 1967) 200 So. 2d 521.

WIGGINTON, CHIEF JUDGE, CARROLL, DONALD K., and RAWLS, JJ., Concur.

[Clerk's Certificate Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 51 Misc., October Term, 1969

ROBERT DEAN DICKEY, PETITIONER

v.

FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIRST DISTRICT.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 728 and placed on the summary calendar.

October 13, 1969

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 370418 361